

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN SECTION

DONALD P. MULLER,

Plaintiff,

vs.

POLICE OFFICER JOSE TORRES,  
et al.,

Defendants.

C. A. No. 3:04-CV-30185-KPN

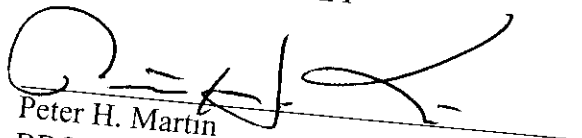
MOTION TO DISMISS FOR FAILURE TO COMPLY WITH FED. R. CIV. P. 8 AND  
10 OR, IN THE ALTERNATIVE, TO STRIKE PORTIONS OF THE COMPLAINT

NOW come Defendant Westfield Police Department, and Defendants Torres, O'Brien, Coach and McCabe ("Defendants")<sup>1</sup> and move, pursuant to Rules 8 (a), 8 (e), 10 (a) and 10 (b) for dismissal of this action for failure of the Complaint to comply with the minimal pleading requirements of the aforesaid Rules of Civil Procedure. In the alternative, Defendants move pursuant to Fed. R. Civ. P. 12 (f) to strike those portions of the Complaint as identified in the accompanying Memorandum of Law and to be granted ten (10) days from receipt by the undersigned of a proper Complaint in which to respond further. This Motion is supported by good cause as set forth in the accompanying Memorandum of Law.

<sup>1</sup> By appearing and filing this Motion, Defendants do not concede that they are proper parties defendant and they do hereby reserve the right to raise that and all other preliminary legal issues at the appropriate time after receipt of a proper Complaint or an adverse ruling on this Motion.

WESTFIELD POLICE DEPARTMENT,  
POLICE OFFICERS JOSE TORRES,  
O'BRIEN, COACH and McCABE

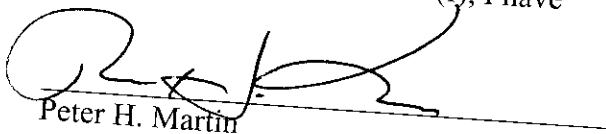
BY THEIR ATTORNEY



Peter H. Martin  
BBO No. 552020  
Assistant City Solicitor  
59 Court Street  
Westfield, MA 01085  
413/572-6260

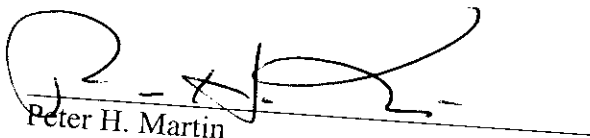
LOCAL RULE 7.1 CERTIFICATION

I hereby certify that prior to the filing of the foregoing Motion I placed a telephone call to the telephone number listed under the signature line on the last page of the Complaint in an effort to contact the Plaintiff. I requested of the gentleman who answered the telephone to give a message to Donald Muller to call Peter Martin, City of Westfield City Solicitor's office at 572-6260. The morning of December 6, 2004 I received a telephone call from Mr. Muller. I was unavailable, but I returned his call when I returned to my office. I telephoned the number he left for me and was required to leave a message for him. He telephoned and we spoke. We were unable to agree upon a course of action but we have agreed upon a time for a follow up discussion. In the meantime, to comply with both the 20 day time frame to respond after service of process and the 20 day time limit in which to file a Motion to Strike under Rule 12 (f), I have filed the forgoing motion.

  
Peter H. Martin

CERTIFICATE OF SERVICE

I, Peter H. Martin, do hereby certify that a true copy of the foregoing document was served upon the Plaintiff by U.S. Mail, first class, postage prepaid, addressed to Donald P. Muller, 769 Worthington Street, Springfield, MA 01105 on this the 6<sup>th</sup> day of December, 2004.

  
Peter H. Martin